

David Karl Gross, ABA #9611065
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, Alaska 99501
Telephone: 907.276.1550
dgross@bhb.com

Edward E. McNally, ABA #9203003
Marc E. Kasowitz (*Admitted Pro Hac Vice*)
Hector Torres (*Admitted Pro Hac Vice*)
Kasowitz Benson Torres LLP
1633 Broadway
New York, New York 10019
Telephone: 212.506.1700
emcnally@kasowitz.com
mkasowitz@kasowitz.com
htorres@kasowitz.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

KLOOSTERBOER INTERNATIONAL
FORWARDING LLC and ALASKA
REEFER MANAGEMENT LLC,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND
BORDER PROTECTION, and TROY A.
MILLER, U.S. Customs and Border
Protection Acting Commissioner, in his
official capacity,

Defendants.

Case No.: 3:21-cv-00198-SLG

DECLARATION OF DARRELL B. WEARE

Pursuant to 28 U.S.C. § 1746, I, Darrell B. Weare, declare as follows:

1. I am the Chief Operating Officer for Bayside Port Corporation in Bayside, New Brunswick, Canada. I have been the Chief Operating Officer for Bayside Port Corporation since August 1, 2008. I am a licensed certified public accountant and chartered accountant and have held those licenses since 1974.

2. From 1990 until the early 2000's, I was the financial consultant and external accountant for Woodstock Cold Storage [1990] Ltd. ("WCS"), now operating as Kloosterboer Bayside Cold Storage ("KBB"). Peter Frye and his wife, Beverly, were the owners of WCS during the period I served as their financial consultant and external accountant. In the early 2000's, WCS was sold to KBB.

3. I submit this declaration in further support of Plaintiffs' motion for a Temporary Restraining Order and Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration.

4. In connection with my consulting and accounting work for WCS, I became acquainted with Christy McManus ("McManus"), who then worked in the office at WCS. I understand that McManus remained employed by KBB until January 2015, and that she served as its General Manager since at least 2012.

5. I had a telephone conversation with McManus at approximately 1:00 p.m. ADT on September 14, 2021, during which I asked her if she could recall any

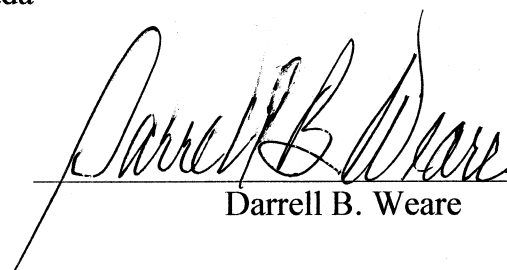
interactions with U.S. Customs and Border Protection (“CBP”) Officers in connection with the utilization of the Bayside Canadian Railway (“BCR”) beginning in 2012.

6. McManus related the following information to me, which I summarized in an email and sent to her for confirmation of accuracy.

7. CBP officers were on site before, during, and after construction of the BCR in Bayside. CBP did some observation one morning after the rail had been operating for a couple of months. The ramp that would have allowed the trucks to exit the flat rail cars was not installed once the BCR learned from CBP that as soon as the rail cars touched the stops on the south end of the rail trackage, their destination had been reached. Thus, it was irrelevant where the trucks were discharged. The driver had to exit the truck during the rail movement to ensure that it was just the truck and trailer being transported in accordance with standard rail safety procedures.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: Bayside, New Brunswick, Canada
September 14, 2021



Darrell B. Weare